IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

MACA.No. 820 of 2005()

OPMV.485/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
REPRESENTED BY ITS MANAGER, REGIONAL OFFICE,
METRO PLAZA, NORTH RAILAWAY STATION ROAD,
ERNAKULAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS: RESPONDENTS 1,2 & CLAIMANT:

1. JOSE, S/O. GEORGE, KAPPIL HOUSE,
UDUMBANCHOLA VILLAGE, RAJAKAD KARAD,
RAJAKAD.

2. ELDHOSE, S/O. JOSEPH, PARAKUDIYIL
HOUSE, OONNUKAL P.O., KOTHAMANGALAM,
ERNAKULAM.

3. BAKKER, S/O. KUNJU VAVA,
MANGATTU HOUSE, PALMATTAM KARA,
KUTTAMANGALAM VILLAGE, KOTHAMANGALAM,
ERNAKULAM DISTRICT.

4. S. JAYAN, JIGI BHAVAN,
TEMPLE ROAD, THODUPUZHA.

BY ADV. SRI.SOORAJ ELANJICKAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 820 OF 2005

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Dated this the 15th day of October, 2007

J U D G M E N T

Third respondent-insurer in O.P(MV) No.485 of 2002 on the file of the Motor Accidents Claims Tribunal, Thodupuzha, is the appellant. Appeal is filed by the Insurer challenging the award passed by the Tribunal by which the appellant was directed to pay a compensation of Rs.25,000/- with 6% interest.

2. Short facts necessary for the disposal of the appeal are as follows: First respondent, who was the driver of Jeep bearing Reg. No.KL-6/A-2117 filed the O.P. claiming compensation for the personal injuries sustained by him in a motor vehicle accident. It was averred that on 20.12.2001 first respondent was driving the aforesaid vehicle. According to the first respondent when he reached the place of accident, a stage carriage bus bearing Reg. No.KL-6/5043 came in a rash or negligent manner and hit against the Jeep driven by the first respondent and he sustained injuries. Second respondent is the driver of the bus and third respondent is owner of the

bus. Subsequently, first respondent impleaded the owner of the Jeep also as a party to the petition. Respondents 2 to 4 remained ex parte. Appellant alone contested the case. It was contended that the accident occurred due to the negligence of the driver of the Jeep himself. It was admitted that the bus was covered with a valid policy of insurance. Quantum of compensation claimed was denied. First respondent produced Exhibits A1 and A2 first information report and first information statement of the crime registered against the driver of the bus. Appellant took up a contention that in any event of the matter there is contributory negligence. Tribunal relying on Exhibit A3 mahazar found that the accident occurred due to the negligence of the driver of the bus alone. That finding is seriously challenged by the appellant. Exhibit A3 scene mahazar shows that the road lies north-south and was having a width of 5.1 metres. The bus was proceeding from north to south and Jeep was proceeding from south to north. As per Exhibit A3 the accident occurred at 1.91 mts. west of the eastern tarred portion of the road and 2.14 mts. east of the western tarred portion. There is some

confusion in the scene mahazar. Going by the measurements given in the mahazar, the total width of the road can only be 4.5 metres whereas the actual width of the road is 5.1. metres. So it is not possible to hold that the accident occurred due to the negligence of the driver of the bus alone. The matter requires further evidence. Further, the Tribunal did not quantify the compensation due to the first respondent. It awarded Rs.25,000/- as compensation as early as on 12.6.2003 on the ground that the matter was settled for the said amount. If the matter was settled and Insurer agreed to pay Rs.25,000/- on 12.6.2003, how the case again came up for evidence on 19.8.2004? Learned counsel appearing for the appellant submitted that the appellant was asked to settle the case by paying Rs.25,000/- but the appellant was not prepared to pay that amount and that was the reason why the case was posted for evidence. The quantum of compensation awarded by the Tribunal also requires reconsideration. So the case has to go back.

3. In the result, the appeal is allowed. The award passed by the Tribunal granting Rs.25,000/- as compensation

to the first respondent is hereby set aside. The case is remanded. The Tribunal is directed to take O.P(MV) No.485 of 2002 back to file and dispose of the same afresh in accordance with law after affording opportunity to both sides to adduce evidence regarding negligence as well as quantum of compensation.

4. Parties are directed to appear before the Motor Accidents Tribunal, Thodupuzha, on 27.11.2007.

Interlocutory Application No.1178 of 2006 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 820 OF 2005

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J U D G M E N T

15TH OCTOBER, 2007